

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 10-CR-20705

ALI DARWICH D-4,

Defendant.

/

ORDER TRANSFERRING MOTION TO CORRECT CLERICAL ERRORS (ECF. NO 824) TO SIXTH CIRCUIT COURT OF APPEALS

Before the court is yet another pro se motion filed by Defendant Ali Darwich which seeks to challenge his underlying sentence or conviction. Although he entitles his motion a “Motion to Correct Clerical Errors,” and purports to bring it under Federal Rule of Criminal Procedure 36, the motion is in fact an attempt to file another motion under 28 U.S.C. § 2255. The court will transfer it to the Sixth Circuit Court of Appeals.

As the court explained in its previous order denying Defendant’s first Rule 36 motion (see ECF No. 795 & ECF No. 811), Federal Rule of Criminal Procedure 36 provides that “[a]fter giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission” “The rule relating to the corrections of clerical mistakes was not intended to allow reassessment of the merits of an earlier decision after the time for appeal has elapsed.” *United States v. Capps*, 810 F.2d 203 (6th Cir. 1986) (citing *United States v. Jones*, 608 F.2d 386 (9th Cir. 1979)). Here, Defendant has not identified any clerical error or omission, but rather challenges

the substance of the court's restitution and sentencing calculation. The court therefore construes his motion as a second or successive motion under 28 U.S.C. § 2255. Section 2255 provides that “[a] second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals.” 28 U.S.C. § 2255(h). As he has received no such certification,¹ the court will transfer the motion to the Sixth Circuit Court of Appeals. Accordingly,

IT IS ORDERED that Defendant's “Motion to Correct Clerical Errors” (Dkt. # 824) is TRANSFERRED to the Sixth Circuit Court of Appeals as a second or successive motion under 28 U.S.C. § 2255.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: May 26, 2020

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, May 26, 2020, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(810) 292-6522

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¹ Indeed, the Sixth Circuit recently denied Defendant leave to file a successive motion under 28 U.S.C. § 2255 on grounds similar to those asserted here. *In re Darwich*, No. 19-2313 (6th Cir. May 1, 2020).